

Regulatory Reform for Securing Certainty and Predictability

Minister of Justice and Human Rights



INFRASTRUCTURE SUMMIT

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REGULATORY REFORM FOR SECURING CERTAINTY AND PREDICTABILITY

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STEPS IN INFRASTRUCTURE LEGAL REFORM

1

Procedures on Private Sector Participation in Infrastructure Provisions. In 1998 the Government issued the Presidential Decree No. 7/1998. This Decree allows private sectors to participate in infrastructure provisions through an open and transparent tender process. Amendment has been made to this Decree for simplification of tender process.

2

Telecommunication Reform. The telecommunication sector has commenced in 1999 with the enactment of Law No. 36/1999. This sector has pioneered infrastructure reforms. Telecommunication business is being gradually opened for competition. A telecommunication regulatory body was established



STEPS IN INFRASTRUCTURE REFORM

3

Oil and Gas Industry Restructuring. Took place in 2001, marked by the enactment of the Law No. 22/2001 on Oil and Natural Gas:

- § industry is differentiated into upstream and downstream
- § open for private sector participation
- § establishment of upstream regulatory body (BP Migas) for supervising implementation of production sharing contracts
- § establishment of downstream regulatory body (BPH Migas) for regulating downstream business

4

Reform on Piped Water Supply Business. Water supply is open for private sector participation through cooperation with Regional Owned Enterprises or through licenses from Local Government



STEPS IN INFRASTRUCTURE REFORM

5

- Road law, comprehensive regulation on toll road.** In October 2004 the Government enacted Law No. 7/2004 which covers regulation of toll roads:
- § PT. Jasa Marga does no longer hold dual function as regulator-operator;
 - § Toll road businesses are open for SOEs, Regionally Owned Enterprises, and private sectors;
 - § Establishment of Toll Road Regulatory Agency;
 - § Tariff is determined by the Minister based on contract and adjusted every two years based on indexation

6

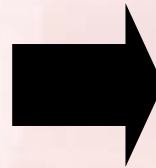
- New Government's target for infrastructure reform acceleration:**
- § By the end of January 2005, no less than 14 regulations will be issued.
 - § The regulation cover sector specific regulations such as toll road, water supply, electricity, port, airport and rail, as well as cross sector regulations such as selection and land procurement procedures.
 - § Redefinition and reorganization of the Committee on Policy for the Acceleration of Infrastructure Development (*Komite Kebijakan Percepatan Pembangunan Infrastruktur* or KKPPI); a special committee chaired by the Coordinating Minister for Economic Affairs



STEPS IN INFRASTRUCTURE REFORM : ENHANCING CERTAINTY & PREDICTABILITY

Old Regime

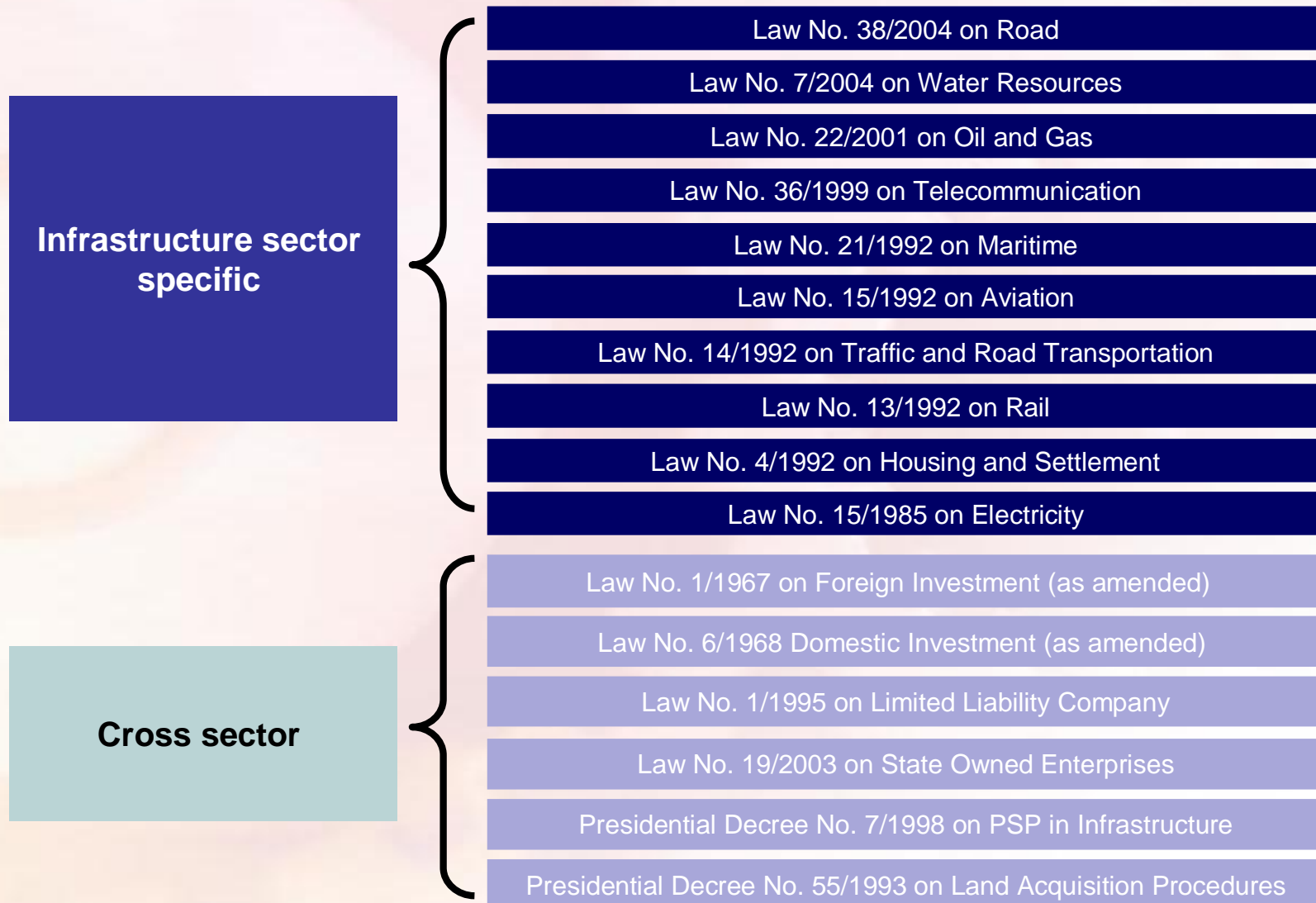
1. Centralized approach
2. Infrastructure provision is provided by SOEs
3. Generally the above SOEs serve dual function as regulator – operator
4. No regulation on monopoly
5. Non recovery tariff settings - tariff by decree
6. Integrated services from upstream to downstream




New Regime

1. Accommodate regional government
2. Infrastructure provision is open: SOEs, Regional Owned Enterprises, private entities
3. Separate regulator-operator
4. Establishment of independent regulatory body
5. Tariff determination based on cost recovery principle – tariff by contract to create predictability in income and reduce project uncertainty
6. Introduce unbundling

Infrastructure Legal Map





REGULATORY REFORM: CHALLENGES AND INDICATIVE RESPONSES


1 **MONOPOLY ISSUES:** Infrastructure usually essential services with monopoly characteristics

Should create competition between the businesses where there is scope for competition; or where there is a natural monopoly, create competition for the business

2 **TARIFF SETTING ISSUES:**

- § Failure to index tariffs has eroded operator's income - income from infrastructure assets is uncertain and un-bankable;
- § The decree tariff setting models basically ensured that the infrastructure is political rather than commercial business;

Should provide indexation of tariffs and charges as part of the tender contract process; tariff adjustment based on contract, for legal certainty



REGULATORY REFORM: CHALLENGES AND INDICATIVE RESPONSES

3 **AFFORDABILITY & DEMAND CONCERNS:**

- § Most customers with infrastructure services are not poor – suppressing tariffs benefits higher income groups and reduces capacity to extend coverage to the poor
- § Expectations that governments will suppress tariffs is a major explanation of the limited current interest of the private sector in infrastructure service provision

There is a need for tendered contracts to be enforced and not subject to political interference

4 **REGULATORY ISSUES:** It is generally agreed that the policy-regulation-operator functions should be separated, otherwise conflicts of interest arise – and risks of investment become too large, too political

Indonesia now has regulatory reforms in place – separating regulation from operations & establishing independent regulatory body



REGULATORY REFORM: CHALLENGES AND INDICATIVE RESPONSES

5 **UNSOLICITED PROJECT:** This type of project created many problems in the past – inefficient and tends to failure in implementation

Unsolicited bids, while not the preferred path, may be permitted. However promoters will still be required to face an open and transparent bidding process, but have competitor matching rights

6 **LAND PROCUREMENT:** Delays in land acquisition have been a major bottleneck to key infrastructure projects

Revision to Presidential decree No. 55/1993 on Land Acquisition for more efficient & timely land acquisition procedures now is take place

FURTHER REFORM AGENDA

Sector	New Law	Reform Agenda
Telecommunication	√	<ul style="list-style-type: none"> • Implementing Law 36/1999, such as review duopoly policy and consider full competition
Electricity	√	<ul style="list-style-type: none"> • Prepare New Law on Electricity • Issue GR on Electricity Usage and Utilization
Oil and Gas	√	<ul style="list-style-type: none"> • Revising Law on Oil & Gas
Road	√	<ul style="list-style-type: none"> • Implementing Law 7/2004 • Issue GR on Toll Road • Establish Toll Road Regulatory Body
Airports	-	<ul style="list-style-type: none"> • Prepare New Law on Aviation • Issue GR on Airports
Ports	-	<ul style="list-style-type: none"> • Prepare New Law on Maritime • Issue GR on Ports
Rail	-	<ul style="list-style-type: none"> • Prepare New Law on Rail • Issue GR on Rail Utilization
Piped Water	√	<ul style="list-style-type: none"> • Issue GR on Development of Piped Water System
Cross Sector		<ul style="list-style-type: none"> • Issue GR on Land Acquisition Procedures • Issue GR on Selection Procedures for Private Sector Participation



Thank You